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उच्च न्यायालय, छत्तीसगढ, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

CRIMINAL APPEAL NO.35/2005

APPELLANT (In Jail) — Azad Manshuri, S/o Nijamuddin Manshuri, aged about 24 years, R/o Village Kuswar, P.S. Ranka, Distt. Garhwa, Jharkhan.

Vs

RESPONDENT — State of Chhattisgarh, Through P.S-Balrampur, Distt. Surguja (C.G.)

Present:

Mr. Arun K Shukla, Advovcate for the appellant.

Mr. S. Yadav, Dy. Govt. Advocate for the respondent-State.

ORAL JUDGMENT

(28th September, 2007)

Per Dhirendra Mishra, J:

This criminal appeal is directed against the judgment of conviction and order of sentence dated 31st October, 2003 passed by the learned Additional Sessions Judge, (FTC), Ramanujganj in S.T. No.239/99 whereby learned Additional Sessions Judge has convicted the appellant herein under Section 395 of the IPC and sentenced him and other co-accused Hilaroos to undergo R.I. for 10 years and to pay a fine of Rs.3,000/-, in default of payment of fine additional R.I. for 3 months.

Case of the prosecution, in brief, is that on 26.2.1999 at about 11.30 in the midnight the appellant herein in association with three

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other accused persons stopped the truck driven by the complainant Ramroop Sahu (PW-10) and looted Rs.2,400/- & a wrist watch on the gun point and sword. Report of the incident was lodged in the Police Station Balrampur on 27.2.1999 at about 4.00 a.m. against the unknown persons on the basis of which offence under Section 394 of the IPC was registered. Appellant and co-accused Hilaroos were arrested on 9.4.1999 vide Ex.P-11. Memorandum statement of the appellant herein was recorded vide Ex.P-3A and on the basis of his disclosure statement an amount of Rs.1,000/- was seized vide seizure memo of Ex.P-4. Test identification parade was conducted on 10.4.1999 by the Additional Tehsildar Shri G.S. Uikey where complainant Ramroop correctly identified the appellant and co-accused Hilaroos. From the memorandum of arrest of the accused persons it was discovered that apart from Hilaroos and the appellant, other three persons namely Roshan Ansari, Praksash Gujar and Bigawan Mistry were also involved in the crime.

After completing investigating the charge sheet was filed under Section 395 of the IPC against the appellant herein, co-accused Hilaroos and showing other three accused persons absconding. During trial, the prosecution examined 15 witnesses and thereafter, the statement of accused persons was recorded under Section 313 of

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Cr.P.C. wherein the appellant denied the circumstances appearing against him and stated that he was arrested from Salegaon, after 12 hrs of the arrest he was taken near the river, there he was shot by the gun on his leg and because of the injury sustained by him he could not walk for a period of one year. However, the learned Additional Sessions Judge after hearing the learned counsel for the respective parties, convicted and sentenced the appellant and co-accused Hilaroos, as mentioned herein above.

Learned counsel for the appellant argued that conviction of the appellant herein is based on the recovery of looted amount of Rs.1,000/- on his memorandum. The trial court has disbelieved the identification of the accused in the test identification parade and even the doc identification has also not been taken into consideration for convicting the appellant. Referring to the witnesses of memorandum and seizure it has been contended that Jumman (PW-2) & Dwarika (PW-3), who have been examined to prove the memorandum & seizure, have not stated a word against the appellant herein, whereas, Siddhnath Choubey (PW-4) has admitted in Para 3 of his deposition that he was making statement on the basis of information given by the police in the police station.

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On the other hand, learned counsel for the State has supported the impugned judgment and contended that the appellant was duly identified by complainant Ramroop (PW-10) during trial. Apart from dock identification, the conviction is also based on the recovery of looted amount of Rs.1,000/- from the appellant, which has been duly proved by Siddhnath Choubey (PW-4), who has stated that the appellant made disclosure statement before him and on the basis of above memorandum Rs.1,000/- was seized in the presence of Dwarika (PW-3), who has proved the recovery. The investigating Officer Shri J.P. Gupta (PW-9) has also proved the memorandum of the appellant and recovery of Rs.1,000/- on the basis of above memorandum.

I have heard learned counsel for the parties. I have perused the impugned judgment as also the oral and documentary evidence available on record.

The trial court has convicted the appellant with an observation that the memorandum, test identification and seizure have been established. However, in Para 11 of the impugned it has been concluded that since the test identification parade was conducted in the presence of police, the document of test identification parade was not acceptable in the evidence. Similarly, while dealing with the identification of the accused persons in the court during trial it has

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been held that from the evidence available on record only the identification of accused Hilaroos has been established from the statement of Ramroop (PW-10).

Incident is of midnight of 26.2.1999 and the FIR was lodged by Ramroop (PW-10), who has described in the FIR that the accused persons were between 25-30 years of age. The description of the clothes, which they were putting on at the time of incident, has also been given, however, there is no other particular description of any of the accused persons. The complainant has further stated that he shall be able to identify the looted articles as also the accused persons. Statement of this witness was recorded on 14.10.2003 i.e. after more than 4 years & 8 months of the incident and therefore, in the absence of any particular identification mark observed by the complainant at the time of incident, the identification conducted for the first time during trial after about five years is a very weak type of evidence and the same cannot be made basis for convicting the accused persons.

So far as the recovery of looted amount of Rs.1,000/- on the basis of memorandum of the appellant herein almost after one month & 15 days is concerned, recovery of cash amount of Rs.1,000/- in the denomination of 100 & 50, which has not been detailed in the FIR, also

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cannot be a basis for drawing inference that the same were looted from the complainant.

Except the above evidence, there is no other evidence available on the record to connect the appellant with the crime in question. Therefore, in the considered opinion of this Court the trial court was not justified in convicting and sentencing the appellant under Section 395 of the IPC.

In the result, the appeal of the appellant succeeds. Conviction of the appellant under Section 395 of the IPC and sentence imposed under that section is hereby set aside. The appellant is acquitted of the above charge and he be set at liberty forthwith, if not required in any other case.

Sd/-
DHIRENDRA MISHRA
Judge

Roshan/-

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